

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ROBERT KLEIN,

Plaintiff,

v.

9:13-CV-0437 (BKS/TWD)

**BRIAN FISCHER, *Commissioner,*
*D.O.C.S., et al.,***

Defendants.

APPEARANCES:

Robert Klein, Plaintiff Pro Se
Southbury, CT 06488

Hon. Eric T. Schneiderman
New York State Attorney General
Colleen D. Galligan, Esq., Assistant Attorney General
The Capitol
Albany, NY 12224
For Defendants

Hon. Brenda K. Sannes, United States District Court Judge

DECISION AND ORDER

Plaintiff Robert Klein, a former New York State inmate, commenced this proceeding under 42 U.S.C. § 1983 alleging violations of the Eighth Amendment, First Amendment and Fourteenth Amendment arising out of his alleged exposure to environmental tobacco smoke (ETS) during his incarceration at Altona Correctional Facility, and the defendants' alleged retaliation for grievances he filed regarding ETS. Dkt. Nos. 1, 5, 37, 49, 72. Plaintiff filed a motion for summary judgment on February 3, 2015, Dkt. No. 81, and defendants filed a cross-motion for summary judgment on March 13, 2015, Dkt. No. 85. The motions were referred to

United States Magistrate Judge Thérèse Wiley Dancks. On July 15, 2015, Magistrate Judge Dancks issued an Order and Report-Recommendation, recommending that plaintiff's motion for summary judgment be denied and that defendants' motion for summary judgment be granted. Dkt. No. 89. Magistrate Judge Dancks advised the parties that they had fourteen days to file written objections to the report and that the failure to object within fourteen days would preclude appellate review. Dkt. No. 89, p. 52. Copies of the Order and Report-Recommendation were mailed to plaintiff via certified and regular mail on July 15, 2015, and no objections to the Report-Recommendation have been filed. *Id.* On August 27, 2015, the certified mailing was returned to the Court with a notice that it had been "unclaimed." Dkt. No. 90.

Since no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court has reviewed the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to the 1983 addition. Under this standard, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.* Having reviewed the Report-Recommendation and having found no clear error, it is hereby:

ORDERED that the Report-Recommendation (Dkt. No. 89) is **ADOPTED** in its entirety for the reasons stated therein; and it is further

ORDERED that Plaintiff's Motion for Summary Judgment (Dkt. No. 81) be **DENIED** and Defendants' Motion for Summary Judgment (Dkt. No. 85) be **GRANTED**; and it is further

ORDERED that plaintiff's Complaint (Dkt. No. 72) is **DISMISSED**; and it is further

ORDERED that the Clerk of the Court is directed to close this case; and it is further

ORDERED that the Clerk of the Court serve copies of this Decision and Order on the parties.

IT IS SO ORDERED.

Dated: September 2, 2015

A handwritten signature in black ink, reading "Brenda K Sannes". The signature is written in a cursive style with a horizontal line underneath the name.

Brenda K. Sannes
U.S. District Judge